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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Argentina, Azerbaijan, Cyprus, Czech Republic, Denmark, Finland, France, Hungary, Latvia, Luxembourg, Mexico, Portugal, Slovenia and United Kingdom of Great Britain and Northern Ireland: draft resolution

Protection of human rights and fundamental freedoms while countering terrorism

The General Assembly,

Reaffirming the purposes and principles of the Charter of the United Nations,

Reaffirming also the Universal Declaration of Human Rights,[1]

Recalling the Vienna Declaration and Programme of Action,[2]

Reaffirming the fundamental importance, including in response to terrorism and the fear of terrorism, of respecting all human rights and fundamental freedoms and the rule of law,

Reaffirming also that States are under the obligation to protect all human rights and fundamental freedoms of all persons,

Reiterating the important contribution of measures taken at all levels against terrorism, consistent with international law, in particular international human rights, refugee and humanitarian law, to the functioning of democratic institutions and the maintenance of peace and security and thereby to the full enjoyment of human rights, as well as the need to continue this fight, including through international cooperation and the strengthening of the role of the United Nations in this respect,

Deeply deploring the occurrence of violations of human rights and fundamental freedoms in the context of the fight against terrorism, as well as violations of international refugee and humanitarian law,

[1] Resolution 217 A (III).
[2] A/CONF.157/24 (Part I), chap. III.

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Noting with concern measures that can undermine human rights and the rule of law, such as the detention of persons suspected of acts of terrorism in the absence of a legal basis for detention and due process guarantees, the deprivation of liberty that amounts to placing a detained person outside the protection of the law, the trial of suspects without fundamental judicial guarantees, the illegal deprivation of liberty and transfer of individuals suspected of terrorist activities, and the return of suspects to countries without individual assessment of the risk of there being substantial grounds for believing that they would be in danger of subjection to torture, and limitations to effective scrutiny of counter-terrorism measures,

Stressing that all measures used in the fight against terrorism, including the profiling of individuals and the use of diplomatic assurances, memorandums of understanding and other transfer agreements or arrangements, must be in compliance with the obligations of States under international law, including international human rights, refugee and humanitarian law,

Recalling article 30 of the Universal Declaration of Human Rights, and reaffirming that acts, methods and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity and security of States and destabilizing legitimately constituted Governments, and that the international community should take the necessary steps to enhance cooperation to prevent and combat terrorism,[3]

Reaffirming its unequivocal condemnation of all acts, methods and practices of terrorism in all its forms and manifestations, wherever and by whomsoever committed, regardless of their motivation, as criminal and unjustifiable, and renewing its commitment to strengthen international cooperation to prevent and combat terrorism,

Recognizing that respect for all human rights, respect for democracy and respect for the rule of law are interrelated and mutually reinforcing,

Reaffirming that terrorism cannot and should not be associated with any religion, nationality, civilization or ethnic group,

Emphasizing the importance of properly interpreting and implementing the obligations of States with respect to torture and other cruel, inhuman or degrading treatment or punishment, and of abiding strictly by the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[4] in the fight against terrorism,

Recalling its resolution 64/168 of 18 December 2009 and Human Rights Council resolution 13/26 of 26 March 2010[5] and other relevant resolutions and decisions as stated in the preamble to resolution 64/168, and welcoming the efforts of all relevant stakeholders to implement those resolutions,

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[3] See sect. I, para. 17, of the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993 (A/CONF.157/24 (Part I), chap. III).

[4] United Nations, *Treaty Series*, vol. 1465, No. 24841.

[5] See *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 53* and corrigendum (A/65/53 and Corr.1), chap. II, sect. A.

Recognizing the importance of the United Nations Global Counter-Terrorism Strategy, adopted on 8 September 2006,[6] and the second biennial review, on 8 September 2010,[7] reaffirming that the promotion and protection of human rights for all and the rule of law are essential to the fight against terrorism, recognizing that effective counter-terrorism measures and the protection of human rights are not conflicting goals but complementary and mutually reinforcing, and stressing the need to promote and protect the rights of victims of terrorism,

Recalling Human Rights Council resolution 15/15 of 30 September 2010,[8] by which the Council decided to extend the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,

1. *Reaffirms* that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law;

2. *Deeply deplores* the suffering caused by terrorism to the victims and their families, expresses its profound solidarity with them, and stresses the importance of providing them with assistance;

3. *Expresses serious concern* at the occurrence of violations of human rights and fundamental freedoms, as well as international refugee and humanitarian law, committed in the context of countering terrorism;

4. *Reaffirms* that counter-terrorism measures should be implemented in accordance with international law, including international human rights, refugee and humanitarian law, thereby taking into full consideration the human rights of all, including persons belonging to national or ethnic, religious and linguistic minorities, and in this regard must not be discriminatory on grounds such as race, colour, sex, language, religion or social origin;

5. *Also reaffirms* the obligation of States, in accordance with article 4 of the International Covenant on Civil and Political Rights,[9] to respect certain rights as non-derogable in any circumstances, recalls, in regard to all other Covenant rights, that any measures derogating from the provisions of the Covenant must be in accordance with that article in all cases, and underlines the exceptional and temporary nature of any such derogations,[10] and in this regard calls upon States to raise awareness about the importance of these obligations among national authorities involved in combating terrorism;

6. *Urges* States, while countering terrorism:

(a) To fully comply with their obligations under international law, in particular international human rights, refugee and humanitarian law, with regard to the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

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[6] Resolution 60/288.

[7] See resolution 64/297.

[8] See *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 53 A* (A/65/53), chap. II.

[9] See resolution 2200 A (XXI), annex.

[10] See, for example, General Comment No. 29 on states of emergency adopted by the Human Rights Committee on 24 July 2001.

(b) To take all necessary steps to ensure that persons deprived of liberty, regardless of the place of arrest or detention, benefit from the guarantees to which they are entitled under international law, including the review of the detention and other fundamental judicial guarantees;

(c) To ensure that no form of deprivation of liberty places a detained person outside the protection of the law, and to respect the safeguards concerning the liberty, security and dignity of the person, in accordance with international law, including international human rights and humanitarian law;

(d) To treat all prisoners in all places of detention in accordance with international law, including international human rights and humanitarian law;

(e) To respect the right of persons to equality before the law, courts and tribunals and to a fair trial as provided for in international law, including international human rights law, such as the International Covenant on Civil and Political Rights, and international humanitarian and refugee law;

(f) To safeguard the right to privacy in accordance with international law, and take measures to ensure that interferences with the right to privacy are regulated by law, subject to effective oversight and appropriate redress, including through judicial review or other means;

(g) To protect all human rights, including economic, social and cultural rights, bearing in mind that certain counter-terrorism measures may have an impact on the enjoyment of these rights;

(h) To ensure that guidelines and practices in all border control operations and other pre-entry mechanisms are clear and fully respect their obligations under international law, particularly international refugee and human rights law, towards persons seeking international protection;

(i) To fully respect non-refoulement obligations under international refugee and human rights law and, at the same time, to review, with full respect for these obligations and other legal safeguards, the validity of a refugee status decision in an individual case if credible and relevant evidence comes to light that indicates that the person in question has committed any criminal acts, including terrorist acts, falling under the exclusion clauses under international refugee law;

(j) To refrain from returning persons, including in cases related to terrorism, to their countries of origin or to a third State whenever such transfer would be contrary to their obligations under international law, in particular international human rights, humanitarian and refugee law, including in cases where there are substantial grounds for believing that they would be in danger of subjection to torture, or where their life or freedom would be threatened in violation of international refugee law on account of their race, religion, nationality, membership of a particular social group or political opinion, bearing in mind obligations that States may have to prosecute individuals not returned;

(k) Insofar as such an act runs contrary to their obligations under international law, not to expose *individuals to cruel,* inhuman or degrading treatment or punishment by way of return to another country;

(l) To ensure that their laws criminalizing acts of terrorism are accessible, formulated with precision, non-discriminatory, non-retroactive and in accordance with international law, including human rights law;

(m) Not to resort to profiling based on stereotypes founded on grounds of discrimination prohibited by international law, including on racial, ethnic and/or religious grounds;

(n) To ensure that the interrogation methods used against terrorism suspects are consistent with their international obligations and are reviewed to prevent the risk of violations of their obligations under international law, including international human rights, refugee and humanitarian law;

(o) To ensure that any person whose human rights or fundamental freedoms have been violated has access to an effective remedy and that victims receive adequate, effective and prompt reparations, where appropriate, including by bringing to justice those responsible for such violations;

(p) To ensure due process guarantees, consistent with all relevant provisions of the Universal Declaration of Human Rights,[1] and their obligations under the International Covenant on Civil and Political Rights, the Geneva Conventions of 1949[11] and the Additional Protocols thereto, of 1977,[12] and the 1951 Convention relating to the Status of Refugees[13] and the 1967 Protocol thereto[14] in their respective fields of applicability;

(q) To shape and implement all counter-terrorism measures in accordance with the principles of gender equality and non-discrimination;

7. *Urges* States, while countering terrorism, to take into account relevant United Nations resolutions and decisions on human rights, and encourages them to give due consideration to the recommendations of the special procedures and mechanisms of the Human Rights Council and to the relevant comments and views of United Nations human rights treaty bodies;

8. *Acknowledges* the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance in its resolution 61/177 of 20 December 2006, and recognizes that the entry into force of the Convention and its implementation will be an important step in support of the rule of law in countering terrorism;

9. *Recognizes* the need to continue ensuring that fair and clear procedures under the United Nations terrorism-related sanctions regime are strengthened in order to enhance their efficiency and transparency, and welcomes and encourages the ongoing efforts of the Security Council in support of these objectives, including by establishing an office of the ombudsperson and continuing to review all the names of individuals and entities in the regime, while emphasizing the importance of these sanctions in countering terrorism;

10. *Urges* States, while ensuring full compliance with their international obligations, to ensure the rule of law and to include adequate human rights

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[11] United Nations, *Treaty Series*, vol. 75, Nos. 970-973.

[12] Ibid., vol. 1125, Nos. 17512 and 17513.

[13] Ibid., vol. 189, No. 2545.

[14] Ibid., vol. 606, No. 8791.

guarantees in their national procedures for the listing of individuals and entities with a view to combating terrorism;

11. *Requests* the Office of the United Nations High Commissioner for Human Rights and the Special Rapporteur of the Human Rights Council on the promotion and protection of human rights and fundamental freedoms while countering terrorism to continue to contribute to the work of the Counter-Terrorism Implementation Task Force, including by raising awareness about the need to respect human rights and the rule of law while countering terrorism;

12. *Takes note* of the report of the Secretary-General on protecting human rights and fundamental freedoms while countering terrorism[15] and the report of the Special Rapporteur of the Human Rights Council on the promotion and protection of human rights and fundamental freedoms while countering terrorism,[16] submitted pursuant to resolution 64/168;

13. *Welcomes* the ongoing dialogue established in the context of the fight against terrorism between the Security Council and its Counter-Terrorism Committee and the relevant bodies for the promotion and protection of human rights, and encourages the Security Council and its Counter-Terrorism Committee to strengthen the links, cooperation and dialogue with relevant human rights bodies, in particular with the Office of the United Nations High Commissioner for Human Rights, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, other relevant special procedures and mechanisms of the Human Rights Council, and relevant treaty bodies, giving due regard to the promotion and protection of human rights and the rule of law in the ongoing work pursuant to relevant Security Council resolutions relating to terrorism;

14. *Calls upon* States and other relevant actors, as appropriate, to continue to implement the United Nations Global Counter-Terrorism Strategy,[6] which, inter alia, reaffirms respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism;

15. *Requests* the Counter-Terrorism Implementation Task Force to continue its efforts to ensure that the United Nations can better coordinate and enhance its support to Member States in their efforts to comply with their obligations under international law, including international human rights, refugee and humanitarian law, while countering terrorism, and to ensure that each Working Group of the Task Force incorporates a human rights perspective into its work;

16. *Encourages* relevant United Nations bodies and entities and international, regional and subregional organizations, in particular those participating in the Counter-Terrorism Implementation Task Force, which provide technical assistance, upon request, consistent with their mandates and as appropriate, related to the prevention and suppression of terrorism to step up their efforts to ensure, respect for international human rights, refugee and humanitarian law, as well as the rule of law, as an element of technical assistance, including in the adoption and implementation of legislative and other measures by States;

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[15] A/65/224.

[16] See A/65/258.